APPENDIX.

General Laws of Massachusetts, Chapter 152—Workmen's Compensation Act, Sects. 1, 15, 18, 21, 22, 24, 26, 46.

"Section 1. The following words as used in this chapter shall, unless a different meaning is plainly required by the context or specifically prescribed, have the following meanings:

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"(4) 'Employee', every person in the service of another under any contract of hire, expressed or implied, oral or written . . .

"(6) 'Insured' or 'insured person' an employer who has provided by insurance for the payment to his employees by an insurer of the compensation provided for by this chapter.

"(7) 'Insurer' any insurance company authorized so to do which has contracted with an employer to pay the compensation provided for by this chapter.

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"Section 15. Where the injury for which compensation is payable was caused under circumstances creating a legal liability in some person other than the insured to pay damages in respect thereof, the employee may at his option proceed either at law against that person to recover damages or against the insurer for compensation under this chapter, but, except as hereinafter provided, not against both. If compensation be paid under this chapter, the insurer may enforce, in the name of the employee or in its own name and for its own benefit, the liability of such other person, and if, in any case where the employee has claimed or received compensation within six months of the injury, the insurer does not proceed to enforce such liability within a period of nine months after said injury, the employee may so proceed. In either event the sum recovered shall be for the benefit of the insurer unless such sum is greater than that paid by it to the employee, in which case four fifths of the excess shall be paid to or retained by the employee. (As amended by Mass. L. (1939) c. 401) . . .

"Section 18. If an insured person enters into a contract, written or oral, with an independent contractor to do such person's work, or if such a contractor enters into a contract with a sub-contractor to do all or any part of the work comprised in such contract with the insured, and the insurer would, if such work were executed by employees immediately employed by the insured, be liable to pay compensation under this chapter to those employees, the insurer shall pay to such employees any compensation which would be payable to them under this chapter if the independent or sub-contractors were insured persons. The insurer, however, shall be entitled to recover indemnity from any other person who would have been liable to such employees independently of this section; and if the insurer has paid compensation under this section; it may enforce, in the name of the employee or in its own name and for its benefit, the liability of such other person. The insurer shall also be entitled to recover from the uninsured independent contractor or the uninsured sub-contractor, all compensation benefits and expenses, medical, hospital or otherwise, that it has paid or may become obligated to pay on account of any injury to the employee or employees of any such uninsured independent contractor or uninsured sub-contractor: provided, that this provision shall not authorize the insurer to recover from such a contractor or sub-contractor an amount which, together with any sum recovered under this chapter from any other person on account of the payment of compensation to such employee or employees, will exceed in the aggregate the amount of such compensation benefits and expenses. This section shall not apply to any contract of an independent or sub-contractor which is merely ancillary and incidental to, and is no part of or process in, the trade or business carried on by the insured, nor to any case where the injury occurred elsewhere than on, in or about the premises on which the contractor has undertaken to execute the work for the insured or which are under the control or management of the insured. The word 'premises', as used in this section, shall include the public highways if the contract requires or necessitates the use of the public highways."

"Section 21. Every insured person shall, as soon as he secures a policy, give written or printed notice to all persons under contract of hire with him that he has provided for payment to injured employees by the insurer.

"Section 22. Every insured person shall give written or printed notice to every person with whom he is about to enter into a contract of hire that he has provided for payment to injured employees by the insurer. An employer ceasing to be insured shall, on or before the day on which his policy expires, give written or printed notice thereof to all persons under contract with him. In case of the renewal of the policy no notice shall be required. He shall file a copy of said notice with the department. The notices required by this and the preceding section may be given in the manner therein provided or in such other manner as may be approved by the department.

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"Section 24. An employee of an insured person shall be held to have waived his right of action at common law or under the law of any other jurisdiction in respect to an injury therein occurring, to recover damages for personal injuries if he shall not have given his employer, at the time of his contract of hire, written notice that he claimed such right, or, if the contract of hire was made before the employer became an insured person, if the employee shall not have given the said notice within thirty days of notice of such insurance. An employee who has given notice to his employer that he claimed his right of action as aforesaid may waive such claim by a written notice, which shall take effect five days after it is delivered to the employer or his agent. The notices required by this section shall be given in such manner as the department may approve."

"Section 26. If an employee who has not given notice of his claim of common law rights of action, under section twenty-four, or who has given such notice and has waived the same, receives a personal injury arising out of and in the course of his employment, or arising out of an ordinary risk of the street while actually engaged, with his employer's authorization, in the business af-

fairs or undertakings of his employer, and whether within or without the commonwealth, he shall be paid compensation by the insurer, as hereinafter provided, if his employer is an insured person at the time of the injury; provided, that as to an injury occurring without the commonwealth he has not given notice of his claim of rights of action under the laws of the jurisdiction wherein such injury occurs or has given such notice and has waived it. For the purposes of this section, any person while operating or using a motor or other vehicle, whether or not belonging to his employer, with his employer's general authorization or approval, in the performance of work in connection with the business affairs or undertakings of his employer, and whether within or without the commonwealth, and any person who, while engaged in the usual course of his trade, business, profession or occupation, is ordered by an insured person, or by a person exercising superintendence on behalf of such insured person, to perform work which is not in the usual course of such trade, business, profession or occupation, and, while so performing such work, receives a personal injury, shall be conclusively presumed to be an employee.

"Section 46. No agreement by any employee to waive his rights to compensation shall be valid, but an employee who is for any reason peculiarly susceptible to injury or who is peculiarly likely to become permanently or totally incapacitated by an injury may, at the discretion of the department and with its written approval within three months after the beginning of his employment, waive his rights to compensation under sections thirty-four, thirty-five and thirty-six, or any of them. (1919, 751, II, Sec. 20; 1927, 309, Sec. 9; 1941, 378, appvd. June 13, 1941.)

Consolidated Laws of New York, chap. 167, sec. 29:

"Remedies of employees, subrogation. 1. If an employee entitled to compensation under this chapter be injured or killed by the negligence or wrong of another not in the same employ, such injured employee, or in case of death, his dependents, need not elect whether to

take compensation under this chapter or to pursue his remedy against such other but may take such compensation and at any time either party thereto or within six months after the awarding of compensation, pursue his remedy against such other subject to the provisions of this section. If such injured employee, or in case of death, his dependents, take or intend to take compensation under this chapter and desire to bring action against such other, such action must be commenced not later than six months after the awarding of compensation and in any event before the expiration of one year from the date such action accrues. In such case, the state insurance fund, if compensation be payable therefrom, and otherwise the person, association, corporation, or insurance carrier liable for the payment of such compensation, as the case may be, shall have a lien on the proceeds of any recovery from such other, whether by judgment, settlement, or otherwise, after the deduction of the reasonable and necessary expenditures, including attorney's fees, incurred in effecting such recovery, to the extent of the total amount of compensation awarded under or provided or estimated by this chapter for such case and the expenses for medical treatment paid by it and to such extent such recovery shall be deemed for the benefit of such fund, person, association, corporation or carrier. Notice of the commencement of such action shall be given within thirty days thereafter to the commissioner, the employer and the insurance carrier upon a form prescribed by the commissioner.

"2. If such injured employee, or in case of death, his dependents, has taken compensation under this chapter but has failed to commence action against such other within the time limited therefor by subdivision one, such failure shall operate as an assignment of the cause of action against such other to the state for the benefit of the state insurance fund, if compensation be payable therefrom, and otherwise to the person, association, corporation, or insurance carrier liable for the payment of such compensation. If such fund, person, association, corporation or carrier, as such an assignee, recover from such other, either by judgment, settle-

ment or otherwise, a sum in excess of the total amount of compensation awarded to such injured employee or his dependents and the expenses for medical treatment paid by it, together with the reasonable and necessary expenditures incurred in effecting such recovery, it shall forthwith pay to such injured employee or his dependents, as the case may be, two-thirds of such excess, and to the extent of two-thirds of any such excess such recovery shall be deemed for the benefit of such employee or his dependents . . .."

United States Constitution, Art. IV, Sec. 1:

"Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."